

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

MORRIS MARZOLLA,

No. 2:15-cv-01654-GEB-CKD

Plaintiff,

v.

JOHNSON & JOHNSON; and  
JANSSEN PHARMACEUTICALS,  
INC.,

**ORDER TO SHOW CAUSE AND  
CONTINUING STATUS (PRETRIAL  
SCHEDULING) CONFERENCE; FED. R.  
CIV. P. 4 (M) NOTICE**

Defendants.

The August 4, 2015, Order Setting Status (Pretrial Scheduling) Conference scheduled a status conference in this case on November 6, 2015, and required the parties to file a joint status report no later than fourteen (14) days prior to the scheduling conference. That Order further required a status report be filed regardless of whether a joint report could be procured. No timely status report was filed as ordered. Instead, Plaintiff filed an untimely Status Report on November 5, 2015, in which he states, in relevant part:

On October 29, 2015, a Notice of Potential Tag-Along regarding this matter and MDL No. 2642, *In Re: Fluoroquinolone Products Liability Litigation*, was filed with the United States Judicial Panel on Multidistrict Litigation ("JPML"). A Conditional Transfer Order ("CTO") was subsequently entered by the JPML on November 4, 2015. . . . Assuming no objections to the CTO are filed, the transfer order will become on November 11, 2015. In light of the anticipated transfer to the MDL

1                   next week, Plaintiff respectfully requests  
 2                   that the Court cancel the initial case  
 3                   management order that is set for November 9,  
 4                   2015.

5                   Defendants have not been served with  
 6                   Plaintiff's complaint. Plaintiff anticipates  
 7                   that issues regarding service of process,  
 8                   including the possibility of a waiver of  
 9                   service under Rule 4 of the Federal Rules of  
 10                  Civil Procedure, will be addressed once the  
 11                  case is transferred to the MDL.

12                  (Pl.'s Status Report 1:22-2:6, ECF No. 4 (heading omitted).)

13                  Plaintiff is Ordered to Show Cause ("OSC") in a writing  
 14                  to be filed no later than November 13, 2015, why sanctions should  
 15                  not be imposed against him and/or his counsel under Rule 16(f) of  
 16                  the Federal Rules of Civil Procedure for failure to file a timely  
 17                  status report. The written response shall also state whether  
 18                  Plaintiff or his counsel is at fault, and whether a hearing is  
 19                  requested on the OSC.<sup>1</sup> If a hearing is requested, it will be held  
 20                  on February 1, 2016, at 9:00 a.m., just prior to the status  
 21                  conference, which is rescheduled to that date and time. A joint  
 22                  status report shall be filed no later than fourteen (14) days  
 23                  prior to the status conference.

24                  Further, Plaintiff is notified under Rule 4(m) of the  
 25                  Federal Rules of Civil Procedure that failure to serve each  
 26                  Defendant with process within the 120 day period prescribed in  
 27                  that Rule may result in the unserved defendant(s) and/or this  
 28                  action being dismissed. To avoid dismissal, on or before December

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<sup>1</sup> "If the fault lies with the attorney, that is where the impact of sanction should be lodged. If the fault lies with the clients, that is where the impact of the sanction should be lodged." In re Sanction of Baker, 744 F.2d 1438, 1442 (10th Cir. 1984), cert. denied, 471 U.S. 1014 (1985). Sometimes the faults of attorneys, and their consequences, are visited upon clients. Myers v. Shekter (In re Hill), 775 F.2d 1385, 1387 (9th Cir. 1985).

1       4, 2015, Plaintiff shall file proof of service for each Defendant  
2 or a sufficient explanation why service was not completed within  
3 Rule 4(m)'s prescribed service period.

4                  IT IS SO ORDERED.

5                  Dated: November 5, 2015

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9                  GARIAND E. BURRELL, JR.  
10                 Senior United States District Judge

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